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2005

# Richard Mendoza v. Skaggs Companies and/or CNA Insurance, and the Utah Labor Commission : Brief of Appellee

Utah Court of Appeals

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Mark D. Dean; Kristy L. Bertelsen; Blackburn and Stoll; Attorneys for Appellees; Alan L. Hennebold; Deputy Commissioner Labor Commission of Utah.

Richard Mendoza; Appellant Pro Se.

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**IN THE UTAH COURT OF APPEALS**

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RICHARD MENDOZA,

Petitioners/Appellants,

**vs.**

SKAGGS COMPANIES and/or CNA  
INSURANCE, and the UTAH LABOR  
COMMISSION,

Respondents/Appellees

: Court of Appeals

: Case No.: **2005-1090**

: Priority 7

: Labor Commission No.: 2002-1380

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**BRIEF OF APPELLEE SKAGGS COMPANY AND CNA INSURANCE**

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Appeal from the Utah Labor Commission

---

Richard Mendoza  
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Appellant

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FILED

UTAH APPELLATE COURTS

DEC 20 2006

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT NOR THAT  
THIS CASE BE REPORTED.**

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**THIS CASE BE REPORTED.**

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## **JURISDICTION OF THE COURT OF APPEALS**

This Court has jurisdiction over this appeal pursuant to Utah Code Annotated §§ 34A-2-801(8)(a), 63-46b-16, and 78-2a-3(2)(a).

## **ISSUES PRESENTED AND STANDARDS OF REVIEW**

Issue: The extent to which the applicable rules and/or statutes permit motions for reconsideration from Administrative Law Judges orders and whether such motions affect, in some manner, the time for filing a Motion for Review.

### **Standard of Review**

Whether there was jurisdiction is a question of law which is reviewed for correctness. Acosta v. Labor Comm'n, 2002 UT App 67 (Utah Ct. App. 2002)

## **DETERMINATIVE LAW**

The determinative law is Utah Code Ann. § 34A-2-801. This section provides:

(2) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection (3), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the date the decision is issued.

(3) (a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.

....

(7) The decision of the commissioner or Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63, Chapter 46b, Administrative Procedures Act.

(8) (a) Within 30 days after the date the decision of the commissioner or Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the commissioner or Appeals Board for the review of the decision of the commissioner or Appeals Board.

Utah Code Ann. § 34A-2-801.

See also, *Maverick Country Stores v. Ind. Comm'n*, 860 P.2d 944 (Utah Ct. App. 1993). (Noting that a motion for Review must set forth specific basis for review and must be received by the Commission within 30 days from the date the decision is signed).

## **STATEMENT OF THE CASE**

### **Nature of the Case**

This case involves an injured worker's entitlement to workers' compensation benefits. The sole issue that must be decided here is whether the Commission had jurisdiction to grant Skaggs' Motion for Review.

### **Course of the Proceedings and Statement of Facts**

On December 20, 2002 Mr. Mendoza filed an Application for Hearing alleging entitlement to temporary total disability benefits from July 9, 2002 to September 24, 2002 as well as permanent partial disability compensation. (R., 1-6).

On August 11, 2003, a hearing on this case was held before Administrative Law Judge ("ALJ") Sharon Eblen. (R., 77).

On January 22, 2004, ALJ Eblen entered Findings of Fact and an Interim Order noting that the disputes in this case centered around the following: (1) whether Mendoza was entitled to a 7% or 13% whole person impairment; (2) whether DRS traction therapy was needed to treat the industrial injury that occurred on May 4, 1999; and, (3) whether Mendoza was entitled to temporary total disability compensation from July 9, 2002 to September 24, 2002. ALJ Eblen referred this matter to a medical panel. (R., 33-36).



On May 7, 2004, the medical panel issued its report on finding that Mendoza has a 7% impairment rating due to his industrial injury, of which \$5,824.29 has been paid by Skaggs. The panel also found that the DRS traction therapy was not medically necessitated by the industrial accident. (R., 42-43).

On January 13, 2005, following ALJ's Eblen's departure from the Labor Commission, ALJ Sessions took over this case and issued Findings of Fact, Conclusions of Law and Order (the "Order"). (R., 50-53).

On January 21, 2005 Skaggs filed a pleading entitled "**Motion for Reconsideration and/or Motion for Review**" as they believed that the Order contained several errors. (R., 54-55). The mistakes included the following:

1. The judge listed the wrong date of injury.
2. The ALJ also made a ruling inconsistent with his findings. The issue was whether the claimant was entitled to benefits from 7/9/02 to 9/24/02. The judge found the claimant medically stable on 7/9/02 which by law stops temporary total disability benefits. However, the ALJ makes additional clerical errors and awarded temporary total disability after 7/9/02 until 9/24/02.
3. The judge also awarded 7% of medical costs which is not supported by any statute, rule or even argued by Mr. Mendoza.

The ALJ chose to reconsider his decision and, on February 8, 2005, ALJ Sessions entered Supplemental and Amended Findings of Fact, Conclusions of

Law and Order ("Supplemental Order") attempting to correct some of these errors but only creating additional confusion. In the Supplemental Order, Judge Sessions found that Mendoza was entitled to \$51,005 in temporary total disability from May 4, 1999 to July 9, 2002. (R., 57-60). Again, the period of 5/4/99 to 7/9/02 was never at issue in the case and was outside of the pleadings filed by Mendoza. This was likely because temporary total benefits had already been paid by Skaggs, to wit: from 5/5/99 to 10/12/99 (when he was released to full duty work)<sup>1</sup> and then from 5/10/01 (following an IDET procedure) until 7/9/02 totaling \$23,692.23.

On February 15, 2005 Skaggs filed a "**Motion for Reconsideration / Motion for Review**" of the Supplemental Order noting errors in the Supplemental Order in which the judge awards benefits which were never claimed by Mr. Mendoza. (R., 61). Again, Skaggs filed this pleading in this fashion giving the ALJ the opportunity to reconsider his decision and to preserve its right for Commission review. Skaggs argued that the ALJ incorrectly awarded temporary total disability from May 4, 1999 to July 9, 2002 since that period of time was never at issue.

On February 28, 2005 ALJ Sessions entered his Order Regarding Motion for Reconsideration ("Third Order") finding it proper to award temporary total

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<sup>1</sup> A full duty work release stops any entitlement to temporary total disability.

disability compensation during the period that was not at issue between the parties in this case. (R., 63-64.). The ALJ cited to several Utah cases and section 34A-2-420 of the Utah Code in support of his ability to alter and amend his Order to correct errors.<sup>2</sup>

On March 30, 2005 Skaggs filed a Motion for Review of the ALJ's Third Order. (R., 66-69).

On October 31, 2005 the Commission entered an Order Granting the Motion for Review (the "Commission's Order") concluding that it was error for the ALJ to award temporary total disability to Mr. Mendoza for a period prior to July 9, 2002 since that was never raised by the pleadings. (R., 73).

On November 30, 2005 Mendoza filed an "Appeal" of the Commission's Order with the Utah Court of Appeals. His Docketing Statement was filed on December 21, 2005.

On October 12, 2006 Skaggs filed a Motion and Memorandum in support of Respondents Motion for Summary Affirmance. Skaggs argued that Mendoza's Brief lacked substantive merit since the only argument raised was that there was no jurisdiction for the Commission to grant the Motion for Review filed by Skaggs. Skaggs argued that it had appealed the judge's Order

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<sup>2</sup> The ALJ cites to Carter v. Industrial Comm'n, 290 P. 776 (Utah 1930), Barber Asphalt Corp. v. Industrial Comm'n, 135 P.2d 266 (Utah 1943) and Hilton Hotel & Pac. Rel. Ins. v. Industrial Comm'n, 897 P.2d 352 (Utah Ct. App. 1995).

on February 28, 2005 in a timely fashion, filing the appeal on March 30, 2005 within the 30 day period.

On November 28, 2006, the Court of Appeals denied the Motion for Summary Dismissal ordering Skaggs to file a Brief within 30 days addressing "the extent to which the applicable rules and/or statutes permit motions for reconsideration from Administrative Law Judges orders and whether such motions affect, in some manner, the time for filing a Motion for Review."

## **SUMMARY OF THE ARGUMENT**

The Commission did not err in considering Skaggs's Motion for Review of March 30, 2005. In this case, the ALJ's Order was entered on February 28, 2005. A Motion for Review was due no later than March 30, 2005. Since Skaggs filed its Motion for Review within the applicable 30 day deadline period on March 30, 2005, the Commission had jurisdiction to consider its appeal.

In addition, Skaggs filing of the Motions for Reconsideration and/or Motion for Review of the judge's prior Orders in this case does not divest the Commission of jurisdiction. Motions for Reconsideration and alterations of ALJ's orders to correct errors are permitted by Utah statute, by the rules of civil procedure, and by case law. In addition, Motions for Review are allowed by Utah statute and Utah rules.

In this case, the ALJ had the opportunity to consider the motions file by Skaggs as requests to reconsider and amend the judgment or to forward the motion to the Commission as a "Motion for Review." The ALJ chose the former option and cited case law to support his decision to reconsider his prior ruling. Once the Amended Orders were issued by the ALJ, Skaggs filed timely motions challenging these rulings.

At all times, Skaggs followed proper procedure and filed timely appeals of the ALJ's orders. Skaggs also preserved their right to Commission review by entitling their pleadings "Motions for Review".

Skaggs asks the appellate court to affirm the Commission's Order which reverses the ALJ's ruling. To allow the ALJ's Order to stand with the numerous errors would be manifestly unjust to Skaggs since the administrative law judge's ruling is wholly in error and awards worker's compensation benefits for a period never claimed by Mr. Mendoza in this case. There is also no harm to Mr. Mendoza. Under Utah statute (Utah Code Ann. § 34A-2-420), Mr. Mendoza may still file an Application for Hearing for any period not claimed in his first application.

## **ARGUMENT**

### **THE COMMISSION DID NOT ERR IN CONSIDERING SKAGGS' MOTION FOR REVIEW**

#### **Skaggs' Filing of the Motions for Reconsideration and/or Motions for Review from Each of the ALJ's Orders Does Not Bar the Commission from Considering its Motion for Review of the ALJ's Third Order**

Mendoza's sole argument is that the Commission erred in considering and granting Skaggs' Motion for Review of March 30, 2005 from the ALJ's Third Order, dated February 13, 2005. He argues that because the Skaggs filed "letters of reconsideration" to the ALJ following the First and Second Orders, but did not technically file a Motion for Review of these two Orders, there was no jurisdiction for the Commission to consider the Motion for Review. In other words, he argues that the Motions for Reconsideration somehow affected the jurisdiction of the Commission to consider this case.

At the outset, Mr. Mendoza misstates the facts. To be clear, Skaggs did not simply file a "letter of reconsideration" of Judge Session's January 13, 2005 Order. Rather, Skaggs timely filed a "Motion for Reconsideration and/or Motion for Review" of this Order –filing it on January 21, 2005, well within the 30 day limitation period. Skaggs addressed the pleading in this fashion to give the ALJ the option of either reconsidering his decision given what were obvious errors and inadvertent mistakes or, to refer it to the Commission for review

pursuant to Utah Code Ann. § 34A-2-801(2) and Labor Commission Rule 602-2-2(M).

It is well-settled under Utah law that a Motion for Review must be filed within 30 days from the ALJ's Order. Utah Code Ann. § 34A-2-801(2) provides:

(2) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection (3), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the date the decision is issued.

**(3) (a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.**

Utah Code Ann. § 34A-2-801. See Mason v. Alta Industries, 2001 UT App 379; Maverick Country Stores v. Ind. Comm'n, 860 P.2d 944 (Utah Ct. App. 1993).

Similarly, Labor Commission Rule 602-2-2(M) allows for Motions for Review within 30 days of the ALJ's Order.

Skaggs is not aware of any current statute or rule in Utah that currently addresses whether a party may file a Motion for Reconsideration of ALJ's Order. However, Motions for Reconsideration and amendments to ALJ's orders



had previously been permitted pursuant to prior Utah statute<sup>3</sup> and by past and current Labor Commission case law.

In fact, Utah's appellate courts have held that an ALJ may correct any error or omission in an original order before review by the entire commission. In Retherford v. Industrial Comm'n, 739 P.2d 76 (Utah 1987), the Court held that if a supplemental order is entered by an administrative law judge, a motion for review of that Order may be filed with the Commission. The court stated that any motion for review of an original or supplemental order must be filed within the appropriate statutory deadline from the date of the order unless extension is granted.

Similarly, Utah Code Ann. § 34A-2-420, the commission's continuing jurisdiction statute, allows a judge to modify or change a former finding or order. On this point, the Court stated in Carter v. Industrial Comm'n, 290 P. 776 (Utah 1930) that its continuing jurisdiction is not limited to changes in physical condition, but also **to rescind, alter or amend orders, decisions or awards on good cause appearing**. See id. at 782. There the court cited Salt

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<sup>3</sup> See Utah Code Ann. § 35-1-82.53 (1987). This statute provides that:

(1) Any party in interest who is dissatisfied with the order entered by an administrative law judge may file a motion for reconsideration of the order.

(2) Any supplemental order entered by the administrative law judge is final, unless a motion to reconsider is filed with the commission.

Lake City v. Industrial Comm'n, 215 P. 1047 (Utah 1923) where it stated that "to avoid the making of excessive or inadequate awards in doubtful and complicated cases, and, if such should occur, and the evidence warrants it, that the commission had adequate power to correct the same." Id. In addition, Skaggs notes that Utah law permits reconsideration and amendment of orders and judgments under Rule 59<sup>4</sup> and Rule 60<sup>5</sup> of the Utah Rules of Civil Procedure. The court held similarly in Paulsen v. Industrial Comm'n, 770 P.2d 125 (Utah 1989) permitting an ALJ to enter an amended order to correct clerical errors.

However, even assuming that Utah law does not permit the filing of motions for reconsideration from ALJ's orders and does not allow an ALJ to amend his or her order, as stated above, **the Court needs not reach this issue since the pleadings were framed in an alternative fashion as a Motion for Review and/or Motion for Reconsideration, thus complying with Utah law.**

Skaggs timely filed motions to the original and supplemental orders of the ALJ. The purpose for filing the motions in an alternative fashion was to

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<sup>4</sup> Rule 59 of the Utah Rules of Civil Procedure allows a party to file a motion to alter or amend judgment which must be served no later than 10 days after the court's Order.

<sup>5</sup> Rule 60 of the Utah Rules of Civil Procedures allows for relief from a court's judgment. This rule provides that upon motion by a party or by the court's own initiative, the court may correct errors or omissions made in a court's Order. Such a motion must be filed within a reasonable time or in some cases not more than three months after judgment.

give the ALJ the opportunity to rule on this matter and correct his obvious clerical errors. Such action is also consistent with the court's ruling in Maverik Country Stores v. Industrial Comm'n, 860 P.2d 944, 949 (Utah Ct. App. 1993) where it stated that it was the hope that disposition of such a motion might eliminate needless appeals and discourage pointless delay. Such is the case here.

In this case, after receiving the first motion, Judge Sessions decided to amend his Order rather than to refer the motion to the Commission. (This was likely because he was not the judge who referred this matter to a medical panel and did not conduct the hearing and had confused several issues). The judge entered an amended Order on February 8, 2005 attempting to correct his mistakes. However, Skaggs filed another timely appeal entitled "Motion for Reconsideration and/or Motion for Review" on February 15, 2005 indicating that the judge was still confused and awarded benefits to the claimant during a period that he had never claimed (i.e., awarding it from 5/4/99 to 7/9/02 which was never at issue in the case). In essence, it appeared that there was still an error in his supplemental order that needed correction.

Following this, Judge Sessions entered an order of February 28, 2005 and awarded the claimant temporary total disability compensation during a period that was never even alleged in his Application for Hearing. Given this blatant mistake in awarding benefits during a period that was never at issue,

and given the ALJ's inability and/or refusal to simply correct it, Skaggs filed a Motion for Review. Skaggs should not be penalized if the ALJ chose to reconsider his decision as allowed by Utah law rather than to refer this for review to the Commission.

In addition, to allow Mr. Mendoza the windfall of benefits during a period that he never claimed in his application for hearing is unjust and against public policy. Mr. Mendoza certainly recognizes this fact as his appellate brief contains no argument disputing this. Rather, he is simply attempting to obtain benefits based upon what he perceives are procedural errors made in this case. As the ultimate finder of fact, the Commission properly corrected the ALJ's error awarding these benefits.

### **CONCLUSION**

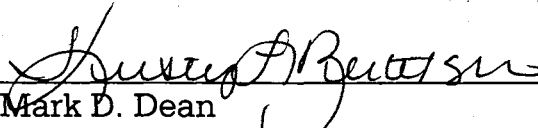
Skaggs should prevail in this appeal. There is no basis in Mr. Mendoza's argument that he should be awarded benefits because the Commission lost jurisdiction of this case because of improperly filings by Skaggs. Skaggs timely filed appeals of the ALJ's Orders as permitted by law. In addition, Mr. Mendoza should not be entitled to a windfall of benefits during a period that he never claimed in his application for hearing.

Mendoza implies that review procedures of the Labor Commission do not authorize motions for reconsideration of ALJ's Orders. There is no dispute

that the jurisdiction of the Commission over worker's compensation appeals is fixed by statute. However, by filing its motions in the alternative as a "Motion for Review", Skaggs took the opportunity for correction of error by the Commission. On this basis, it logically follows that the Commission had jurisdiction to grant Skaggs' Motion for Review.

Respectfully submitted this 20<sup>th</sup> day of December, 2006.

BLACKBURN & STOLL, LC



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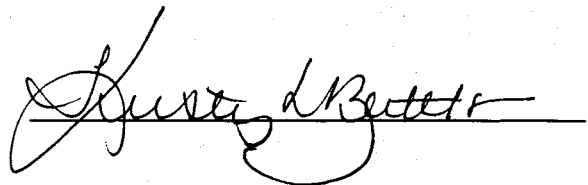
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I certify that true and correct copies of the foregoing document were mailed, first class, postage prepaid on the ~~20<sup>th</sup>~~ 21<sup>st</sup> day of December, 2006, to:

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A handwritten signature in cursive script, appearing to read "Susan D. Butler", is written over a horizontal line.